

(3) is traveling;

(4) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, if the weapon is a type commonly used in the activity;

(5) holds a security officer commission issued by the Texas ~~[Board of Private Investigators and]~~ Private Security Board ~~[Agencies]~~, if the person:

(A) ~~is [the person is]~~ engaged in the performance of the person's duties as ~~an [a security] officer commissioned under Chapter 1702, Occupations Code, or is traveling to or [and] from the person's place of assignment; and~~

(B) ~~is either:~~

(i) ~~[the person is]~~ wearing the officer's ~~[a distinctive]~~ uniform~~;~~ and carrying

~~[(C)] the officer's weapon [is] in plain view; or~~

~~(ii) acting as a personal protection officer and carrying the person's security officer commission and personal protection officer authorization;~~

(6) is carrying a concealed handgun and a valid license issued under *Subchapter H, Chapter 411, Government Code* ~~[Article 4413(29cc), Revised Statutes]~~, to carry a concealed handgun of the same category as the handgun the person is carrying; or

(7) ~~[holds a security officer commission and a personal protection authorization issued by the Texas Board of Private Investigators and Private Security Agencies and who is providing personal protection under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes); or~~

~~[(8)] holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises.~~

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 5. This Act takes effect September 1, 2007.

Passed by the House on May 9, 2007: Yeas 144, Nays 0, 2 present, not voting; passed by the Senate on May 23, 2007: Yeas 31, Nays 0.

Approved June 15, 2007.

Effective September 1, 2007.

CHAPTER 1049

H.B. No. 2106

AN ACT

relating to the regulation of barbering and cosmetology.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1601.002, Occupations Code, is amended to read as follows:

Sec. 1601.002. DEFINITION OF BARBERING. In this chapter, "barbering," "practicing barbering," or the "practice of barbering" means:

(1) performing or offering or attempting to perform for compensation or the promise of compensation any of the following services:

(A) treating a person's mustache or beard by arranging, beautifying, coloring, processing, shaving, styling, or trimming;

(B) treating a person's hair by:

(i) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(ii) providing a necessary service that is preparatory or ancillary to a service under Subparagraph (i), including bobbing, clipping, cutting, or trimming; or

(iii) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from a charge for any other service;

(C) cleansing, stimulating, or massaging a person's scalp, face, neck, arms, or shoulders:

(i) by hand or by using a device, apparatus, or appliance; and

(ii) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(D) beautifying a person's face, neck, arms, or shoulders using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(E) treating a person's nails by:

(i) cutting, trimming, polishing, tinting, coloring, cleansing, manicuring, or pedicuring; or

(ii) attaching false nails;

(F) massaging, cleansing, treating, or beautifying a person's hands;

(G) administering facial treatments;

(H) weaving a person's hair *by using any method to attach commercial hair to a person's hair or scalp*;

(I) shampooing or conditioning a person's hair; [øf]

(J) servicing in any manner listed in Paragraph (B) a person's wig, toupee, or artificial hairpiece on a person's head or on a block after the initial retail sale; or

(K) *braiding a person's hair, trimming hair extensions only as applicable to the braiding process, and attaching commercial hair only by braiding and without the use of chemicals or adhesives*;

(2) advertising or representing to the public in any manner that a person is a barber or is authorized to practice barbering; or

(3) advertising or representing to the public in any manner that a location or place of business is a barbershop, specialty shop, or barber school.

SECTION 2. Section 1601.253(b), Occupations Code, is amended to read as follows:

(b) The department shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the *applicable* examination [~~with an average grade of at least 75 percent~~];

(3) pays the required fee; and

(4) possesses the other qualifications required by this chapter.

SECTION 3. Subchapter F, Chapter 1601, Occupations Code, is amended by adding Sections 1601.258 and 1601.259 to read as follows:

Sec. 1601.258. ELIGIBILITY FOR HAIR WEAVING SPECIALTY CERTIFICATE OF REGISTRATION. (a) A person holding a hair weaving specialty certificate of registration may perform only barbering as defined by Section 1601.002(1)(H).

(b) An applicant for a hair weaving specialty certificate of registration must:

(1) be at least 17 years of age; and

(2) satisfy the requirements specified by the department, including training through a commission-approved training program.

(c) The department shall issue a hair weaving specialty certificate of registration to an applicant who:

(1) possesses the qualifications described by Subsection (b);

- (2) *pays the required registration fee; and*
- (3) *has not committed an act that constitutes a ground for denial of the certificate.*

Sec. 1601.259. ELIGIBILITY FOR HAIR BRAIDING SPECIALTY CERTIFICATE OF REGISTRATION. (a) A person holding a hair braiding specialty certificate of registration may perform only barbering as defined by Section 1601.002(1)(K).

(b) An applicant for a hair braiding specialty certificate must:

- (1) be at least 17 years of age; and*
- (2) satisfy the requirements specified by the department, including training through a commission-approved training program.*

(c) The department shall issue a hair braiding specialty certificate of registration to an applicant who:

- (1) possesses the qualifications described by Subsection (b);*
- (2) pays the required registration fee; and*
- (3) has not committed an act that constitutes a ground for denial of the certificate.*

SECTION 4. Section 1601.303, Occupations Code, is amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department shall issue a barbershop permit to an applicant if:

- (1) the applicant owns the barbershop; [and]
- (2) the applicant verifies the application; and
- (3) the shop meets the minimum health standards for barbershops set by the commission and complies with all other commission rules.

SECTION 5. Sections 1601.304 and 1601.305, Occupations Code, are amended to read as follows:

Sec. 1601.304. [MANICURIST] SPECIALTY SHOP PERMIT. (a) A person who holds a [manicurist] specialty shop permit may maintain an establishment in which only barbering as defined by Section [Sections] 1601.002(1)(E), [and] (F), (H), or (K) is performed. [A manicurist specialty shop may be operated only under the direction of a person who holds a manicurist license.]

(b) An applicant for a [manicurist] specialty shop permit must submit:

- (1) an application on a department-approved form [that includes:
 - [(A) the shop's address;
 - [(B) the legal description of the premises for which the permit is sought; and
 - [(C) any other information required by the department]; and
- (2) the required inspection fee.

~~[(c) As soon as practicable after receipt of the application and fee, the department shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.]~~

Sec. 1601.305. ISSUANCE OF [MANICURIST] SPECIALTY SHOP PERMIT. The department shall issue a [permanent manicurist] specialty shop permit to an applicant if:

- (1) the applicant submits proof that the applicant satisfies the requirements established by the commission for a specialty shop [holds a manicurist license]; [and]
- (2) the applicant pays the required inspection fee and permit fee;
- (3) the applicant verifies the application and the application complies with commission rules; and
- (4) the applicant has not committed an act that constitutes a ground for denial of a permit, certificate, or license under this chapter [the shop meets the minimum health standards for manicurist specialty shops set by the commission, as determined by a department inspection under Section 1603.103, and any other requirements imposed by commission rule].

SECTION 6. Section 1601.353(a), Occupations Code, is amended to read as follows:

(a) The department may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) ~~a [an adequate school site housed in a substantial]~~ building of permanent construction containing at least 2,800 square feet of floor space, divided into *at least*:

- (A) a senior department;
- (B) a junior department;
- (C) a class theory room;
- (D) a supply room;
- (E) an office space; *and*
- (F) ~~[a dressing and cloak room; and~~

~~[(G) two sanitary, modern,] separate restrooms for male and female students[, each equipped with one commode and one of which is also equipped with a urinal];~~

- (2) a hard-surface floor-covering of tile or other suitable material;
- (3) at least 20 modern barber chairs, including a cabinet and mirror for each chair;
- (4) a sink ~~[lavatory]~~ behind every two barber chairs;
- (5) a liquid sterilizer for each barber chair;
- (6) an adequate number of latherers, vibrators, and hair dryers for student use;
- (7) adequate lighting for each room;
- (8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;
- (9) ~~[a library with library facilities available to students containing]~~ at least one medical dictionary and a standard work on human anatomy;
- (10) adequate drinking fountain facilities, with at least one for each floor; *and*
- (11) *at least one fire extinguisher* ~~[adequate toilet facilities for the students; and~~
- ~~[(12) adequate fire-fighting equipment].~~

SECTION 7. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by the department may practice barbering only at a location for which the department has issued a barbershop permit, specialty shop permit, or barber school permit *under this chapter or a permit issued under Chapter 1603*.

SECTION 8. Section 1602.256, Occupations Code, is amended to read as follows:

Sec. 1602.256. ELIGIBILITY FOR A MANICURIST *SPECIALTY* LICENSE. (a) A person holding a manicurist *specialty* license may perform only the practice of cosmetology defined in Section 1602.002(a)(10) or (11) ~~[1602.002(9) or (10)]~~.

(b) To be eligible for a manicurist *specialty* license, an applicant must:

- (1) be at least 17 years of age;
- (2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; *and*
- (3) have completed 600 hours of instruction in manicuring through a commission-approved training program.

SECTION 9. Section 1602.257(a), Occupations Code, is amended to read as follows:

(a) A person holding a facialist specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6) through (9) ~~[Section 1602.002(7)]~~.

SECTION 10. Section 1602.258, Occupations Code, is amended to read as follows:

Sec. 1602.258. ELIGIBILITY FOR A SPECIALTY CERTIFICATE. (a) A person holding a specialty certificate may perform only the practice of cosmetology defined in Sections 1602.002(a)(2) through (4) ~~[Section 1602.002(2), (3), (4), or (7)]~~.

(b) To be eligible for a specialty certificate, an applicant must:

- (1) be at least 17 years of age; *and*
- (2) ~~[have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and~~

~~[(3)]~~ have the necessary requisites as determined by the department in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 11. Section 1602.262(a), Occupations Code, is amended to read as follows:

(a) An applicant for an operator license, instructor license, manicurist *specialty* license, or facialist specialty license is entitled to the license if the applicant:

- (1) meets the applicable eligibility requirements;
- (2) passes the applicable examination;
- (3) pays the required fee; and
- (4) has not committed an act that constitutes a ground for denial of the license.

SECTION 12. Section 1602.303(b), Occupations Code, is amended to read as follows:

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

- (1) be on a form prescribed by the department;
- (2) be verified by the applicant; *and*
- (3) ~~[contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and~~
- ~~[(4)]~~ contain a statement that the building:

(A) ~~[is fireproof;~~

~~[(B)]~~ is of permanent construction *and is divided into at least two separate areas:*

- (i) one area for instruction in theory; and*
- (ii) one area for clinic work;*

(B) ~~[(C)]~~ contains a minimum of 3,500 square feet of floor space;

(C) ~~[(D)]~~ has separate restrooms for male and female students; and

(D) ~~[(E)]~~ contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

SECTION 13. Section 1602.354, Occupations Code, is amended to read as follows:

Sec. 1602.354. CONTINUING EDUCATION. (a) The commission will by rule recognize, prepare, or administer continuing education programs for the practice of cosmetology. Participation in the programs is mandatory for all license renewals.

(b) *The commission may only require a license holder to complete continuing education of not more than four hours in health and safety courses if the license holder:*

- (1) is at least 65 years of age; and*
- (2) has held a cosmetology license for at least 15 years.*

SECTION 14. Section 1602.403(a), Occupations Code, is amended to read as follows:

(a) A private beauty culture school may not employ:

- (1) a person holding an operator license, manicurist *specialty* license, or specialty certificate solely to perform the practices of cosmetology for which the person is licensed or certified; or
- (2) a person holding an instructor license to perform any act or practice of cosmetology.

SECTION 15. Section 1603.103, Occupations Code, is amended to read as follows:

Sec. 1603.103. INSPECTION OF SCHOOLS~~[-SHOPS, AND FACILITIES]~~ BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school~~[-shop, or facility]~~ in compliance with this chapter, Chapter 1601, or

Chapter 1602, a person may not operate a school[, ~~shop, or other facility~~] licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school[, ~~shop, or other facility~~] that is not approved by the department on initial inspection may be reinspected.

(c) The ~~department may charge the school[, shop, or other facility shall pay]~~ a fee for each inspection. The commission shall by rule set the amount of the fee.

SECTION 16. Sections 1603.104(b) and (e), Occupations Code, are amended to read as follows:

(b) At least once every two years, the department shall inspect each [school,] shop[,] or other facility that holds a license, certificate, or permit *in which the practice of barbering or cosmetology is performed* under this chapter, Chapter 1601, or Chapter 1602, *and at least twice per year, the department shall inspect each school in which barbering or cosmetology is taught under this chapter, Chapter 1601, or Chapter 1602.*

(e) The ~~department may charge the school, shop, or other facility shall pay]~~ a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

SECTION 17. Subchapter C, Chapter 1603, Occupations Code, is amended by adding Section 1603.1045 to read as follows:

Sec. 1603.1045. CONTRACT TO PERFORM INSPECTIONS. The department may contract with a person to perform for the department inspections of a school, shop, or other facility under this chapter, Chapter 1601, or Chapter 1602.

SECTION 18. Subchapter E, Chapter 1603, Occupations Code, is amended by adding Sections 1603.205 and 1603.206 to read as follows:

Sec. 1603.205. DUAL BARBER AND BEAUTY SHOP LICENSE. (a) A person holding a dual barber and beauty shop license may own, operate, or manage a shop in which any practice of barbering defined by Section 1601.002(1) or cosmetology defined by Section 1602.002(a) is performed.

(b) An applicant for a dual barber and beauty shop license must submit:

- (1) an application on a department-approved form that is verified by the applicant;*
- (2) proof that the applicant meets the applicable requirements under Chapters 1601 and 1602 for obtaining a barbershop permit and a beauty shop license; and*
- (3) the required license fee.*

(c) The department shall issue a dual barber and beauty shop license to an applicant that:

- (1) meets the requirements under this chapter and Chapters 1601 and 1602;*
- (2) complies with commission rules; and*
- (3) pays the required fees.*

(d) The holder of a dual barber and beauty shop license must comply with this chapter, Chapters 1601 and 1602, and commission rules related to barbering and cosmetology.

Sec. 1603.206. MOBILE SHOPS. (a) In this section, "mobile shop" means a facility that is readily movable and where barbering, cosmetology, or both are practiced other than at a fixed location.

(b) A barbershop, beauty shop, or specialty shop licensed or permitted under this chapter, Chapter 1601, or Chapter 1602 may be a mobile shop.

(c) The commission may adopt rules to administer this section, including rules providing for:

- (1) the licensing or permitting of a mobile shop;*
- (2) the fees for a mobile shop;*
- (3) the operation of a mobile shop;*
- (4) reporting requirements for a mobile shop; and*
- (5) the inspection of a mobile shop.*

SECTION 19. Section 1603.352, Occupations Code, is amended to read as follows:

Sec. 1603.352. *STERILIZATION [SANITATION] REQUIREMENTS FOR CERTAIN SERVICES.* (a) A person who holds a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602 and who performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602.002(a)(10) or (11) ~~[1602.002(10) or (11)]~~:

~~[(1)]~~ shall, before performing the service, *clean, disinfect, and sterilize with an autoclave or a dry heat, ultraviolet, or other department-approved sterilizer, in accordance with the sterilizer manufacturer's instructions, each metal [nondisposable] instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, used to perform the service[; and*

~~[(2)] may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed].~~

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, ~~[or]~~ beauty culture school, *or other facility licensed under this chapter, Chapter 1601, or Chapter 1602,* is responsible for providing an autoclave *or a dry heat, ultraviolet, or other department-approved sterilizer* for use in the shop or school as required by Subsection (a). An autoclave *or a dry heat, ultraviolet, or other department-approved sterilizer* used as required by Subsection (a) must be:

~~[(1) registered and]~~ listed with the *United States [federal]* Food and Drug Administration~~[; and~~

~~[(2) used in accordance with the manufacturer's instructions].~~

(c) *Each sterilized instrument must be stored in accordance with the manufacturer's instructions.*

(d) *This section does not apply to:*

(1) *single-use instruments; or*

(2) *nonmetal nail files, buffer blocks, pumice stones, nail brushes, or other similar instruments.*

(e) *The commission may adopt rules to administer this section.*

SECTION 20. Subchapter J, Chapter 1603, Occupations Code, is amended by adding Sections 1603.455 and 1603.456 to read as follows:

Sec. 1603.455. *EMERGENCY ORDERS.* (a) *The executive director may issue an emergency order to suspend or revoke a license or permit issued, or to cease the operation of an unsafe facility regulated, by the department under this title if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.*

(b) *The executive director may issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.*

(c) *If an emergency order is issued under this section without a hearing, the executive director, not later than the 10th day after the date the emergency order was issued, shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the emergency order. The executive director shall set the hearing for a date not later than the 30th day after the date the time and place for the hearing are set. The hearing examiner shall affirm the order to the extent that reasonable cause existed to issue the order.*

(d) *The commission by rule may prescribe procedures for the issuance and appeal of an emergency order under this section, including a rule to allow the commission to affirm, modify, or set aside a decision by the State Office of Administrative Hearings under Subsection (c).*

(e) *A proceeding under this section is a contested case under Chapter 2001, Government Code.*

Sec. 1603.456. *CEASE AND DESIST ORDERS.* *The executive director may issue a cease and desist order, after notice and opportunity for hearing, if the executive director determines that the order is necessary to prevent a violation of:*

- (1) *this chapter, Chapter 1601, or Chapter 1602; or*
- (2) *a rule adopted by the commission.*

SECTION 21. Sections 1601.506, 1602.266(c), and 1602.408, Occupations Code, are repealed.

SECTION 22. (a) The Texas Department of Licensing and Regulation shall issue a hair braiding specialty certificate of registration under Section 1601.259, Occupations Code, as added by this Act, to an applicant qualified under this section who:

- (1) applies for a certificate of registration under this section not later than October 1, 2007;
- (2) has the experience required by this section; and
- (3) pays the application fee.

(b) An applicant for a hair braiding specialty certificate of registration under this section is required to have practiced hair braiding in this state for at least 10 years before the regulation of hair braiding by Chapter 267, Acts of the 75th Legislature, Regular Session, 1997.

(c) This section expires on October 31, 2007.

SECTION 23. Not later than January 1, 2008, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement the changes in law made by this Act, including rules to administer:

- (1) Sections 1601.258 and 1601.259, Occupations Code, as added by this Act, related to eligibility for hair weaving and hair braiding specialty certificates;
- (2) Section 1602.354, Occupations Code, as amended by this Act, related to continuing education and renewal requirements;
- (3) Section 1603.205, Occupations Code, as added by this Act, related to dual barber and beauty shop licenses.

SECTION 24. The changes in law made by this Act apply only to an application for the issuance or renewal of a license, permit, or certificate that is filed with the Texas Department of Licensing and Regulation on or after the effective date of this Act. An application for the issuance or renewal of a license, permit, or certificate that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 25. Notwithstanding Section 1603.205, Occupations Code, as added by this Act, the Texas Department of Licensing and Regulation may not issue a license under that section before May 1, 2008.

SECTION 26. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Passed by the House on May 4, 2007: Yeas 143, Nays 1, 1 present, not voting; the House concurred in Senate amendments to H.B. No. 2106 on May 25, 2007: Yeas 139, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 23, 2007: Yeas 31, Nays 0.

Approved June 15, 2007.

Effective June 15, 2007.

CHAPTER 1050

H.B. No. 2115

AN ACT

relating to a defendant's eligibility for deferred adjudication of certain intoxication offenses.